

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COLLEEN SHY, Individually, and as Special
Administrator of the Estate of Neil Shy,

Plaintiff,

Case No: 08C2736

AMERICO FINANCIAL LIFE AND ANNUITY
INSURANCE CO., d/b/a AMERICO,

Judge Darrah

Defendant.

**DEFENDANT AMERICO'S ANSWER AND AFFIRMATIVE DEFENSE TO
PLAINTIFF'S COMPLAINT**

NOW COMES the Defendant, Americo Financial Life and Annuity Insurance Company, d/b/a Americo (“Americo”), by and through its attorneys, LOCKE LORD BISSELL & LIDDELL LLP, and hereby submits its Answer and Affirmative Defense to Plaintiff’s Complaint as follows:

BREACH OF CONTRACT

1. That Colleen Shy is an individual residing at 10836 South Komensky Avenue, Oak Lawn, Illinois and a legal resident of the State of Illinois.

ANSWER: Americo admits the allegations of Paragraph 1 of Plaintiff's Complaint.

2. That the Defendant, AMERICO, is a company authorized to write life insurance in the State of Illinois.

ANSWER: Americo admits the allegations of Paragraph 2 of Plaintiff's Complaint.

3. That on or about October 11, 2006, Neil Shy submitted an application (hereinafter referred to as the “Application”) for life insurance coverage with the Defendant, AMERICO.

ANSWER: Americo admits that the application for life insurance was taken by the producing agent on or about October 11, 2006.

4. That the Plaintiff delivered to AMERICO timely payment as the proposed consideration for defendant's acceptance of the application.

ANSWER: Americo admits that the premiums related to the application for life insurance were received from Neil Shy.

5. That Defendant AMERICO accepted Neil Shy's application and premium payment, thereby entering into a contract with Plaintiff to provide life insurance pursuant to the terms and conditions of the policy (herein "Policy").

ANSWER: Americo admits that Neil Shy's application and premium were accepted, and Americo admits that it entered into a contract to provide life insurance subject to the terms and conditions of the insurance policy, but the policy was subsequently rescinded by Americo based on material misrepresentations in the application for life insurance and all premiums received by Americo were refunded to Plaintiff.

6. That on or about June 2, 2007, Neil Shy passed away.

ANSWER: Defendant Americo admits the allegations of Paragraph 6 of Plaintiff's Complaint.

7. That on or about January 10, 2008, the Defendant AMERICO breached the policy by wrongfully denying coverage and rescinding the policy.

ANSWER: Defendant admits that it advised Plaintiff that, pursuant to the terms and conditions of the policy, Americo rescinded the policy of life insurance provided to Neil Shy

based on material misrepresentations in the application for life insurance. Americo denies the remaining allegations of Paragraph 7 of Plaintiff's Complaint.

8. That as a result, Coleen Shy, as the sole beneficiary of the policy, has been denied life insurance coverage which was owed to her under the Policy.

ANSWER: Defendant Americo denies the allegations of Paragraph 8 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSE

Based on material misrepresentations in the application for insurance completed by Neil Shy, Plaintiff's claim is barred pursuant to Section 154 of the Illinois Insurance Code, 215 ILCS 5/154, et seq.

WHEREFORE, Defendant Americo Financial Life And Annuity Insurance Company, d/b/a Americo, denies that Plaintiff is entitled to any relief whatsoever and requests that Plaintiff's complaint be dismissed with costs assessed in Defendant's favor and such further relief as the Court deems just and appropriate.

AMERICO FINANCIAL LIFE &
ANNUITY INSURANCE COMPANY

By: s/Robert E. Sweeney, Jr
One of its attorneys

Robert E. Sweeney, Jr.
Mark A. Deptula
LOCKE LORD BISSELL & LIDDELL LLP
111 South Wacker Drive
Chicago, IL 60606
312-443-0700